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No. 85-1962

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PAUL R. RIDDICK, JR., *et al.*,

Petitioners,

v.

THE SCHOOL BOARD OF THE CITY OF NORFOLK, *et al.*,

Respondents.

MOTION FOR LEAVE TO FILE AND BRIEF *AMICI CURIAE* OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, THE NAACP SPECIAL CONTRIBUTION FUND, THE AMERICAN CIVIL LIBERTIES UNION AND THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Introduction

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), NAACP Special Contribution Fund, American Civil Liberties Union ("ACLU"), and the Mexican-American Legal Defense and Educational Fund ("MALDEF"), hereby respectfully move this Court for leave to file the attached brief as *amici curiae,* in support of the Petition for Writ of Certiorari pursuant to Rule 36.1 of this Court's Rules. The brief *amici curiae* is being conditionally filed with this motion, copies of which have been served upon all parties. The written consent of the petitioners is on file with the Clerk. Respondents have refused their consent.

Reasons for Granting the Motion

All of the above-named movants have a long history of direct support for, and participation in, cases furthering

school desegregation in this Court and in the courts of appeals. The Lawyers' Committee, organized in 1963 at the request of the President of the United States to assure civil rights to all Americans, has enlisted the services of thousands of members of the private bar in cases involving education (including school desegregation), voting, employment, housing, municipal services, the administration of justice and law enforcement. It has participated in such school desegregation cases as *Board of Education* v. *Harris*, 444 U.S. 130 (1979); *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); and the instant case below, *Riddick* v. *School Board of the City of Norfolk*, 784 F.2d 521 (4th Cir.), *petition for cert. filed*, 54 U.S.L.W. 3811 (U.S. May 30, 1986) (No. 85-1962).

The NAACP Special Contribution Fund, a non-profit membership corporation, was formed in order voluntarily to promote equality of rights and eradicate caste and race prejudice among the citizens of the United States. It has participated in this Court, both as a party and as *amicus curiae*, in cases presenting constitutional and statutory claims of racial discrimination. *E.g.*, *Washington* v. *Seattle School District No. 1*, 458 U.S. 457 (1982); *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978); *Pasadena City Board of Education* v. *Spangler*, *supra*; *Washington* v. *Davis*, 426 U.S. 229 (1976); *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

The ACLU, a nationwide, non-partisan organization, is dedicated to protecting the fundamental rights of the people of the United States. Among those rights is the equal protection right to a nondiscriminatory, desegregated public education. It has participated in *Crawford* v. *Los Angeles Board of Education*, 458 U.S. 527 (1982); *Dayton Board of Education* v. *Brinkman*, 443 U.S. 526 (1979); *Columbus*

Board of Education v. *Penick*, 443 U.S. 449 (1979); and *Pasadena City Board of Education* v. *Spangler*, *supra*.

MALDEF is a national civil rights organization whose principal objective is to secure the civil rights of Hispanics living in the United States. MALDEF has presented significant education issues to this Court in such cases as *Plyler* v. *Doe*, 457 U.S. 202 (1982) and *Keyes* v. *School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973).

Movants have concluded, as this Court has long recognized, that discrimination on the basis of race and the racial segregation of educational facilities are serious impediments to equal educational opportunity. The return to all black schools under Norfolk's Proposed Plan may well be understood throughout the country as a signal to abandon the principles of *Brown*.

Movants are uniquely placed to aid the Court in addressing the questions presented by petitioners. Movants speak on behalf of members of the bar deeply versed in the relevant law and on behalf of preeminent civil rights and civil liberties organizations. More than one hundred cases, including those in which movants are involved or expect to be involved, may be affected by the disposition of *Riddick* in this Court.

Relief Sought

For the foregoing reasons, movants respectfully pray that they be permitted to file the attached brief *amici curiae*.

Dated: New York, New York
June 27, 1986

Respectfully submitted,

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Interest of *Amici Curiae*

The Lawyers' Committee

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") was organized in 1963 at the request of the President of the United States to assure civil rights to all Americans, in particular by affording legal services otherwise unavailable to minorities and the poor pursuing claims for equal treatment under law. The Committee is a non-profit, private corporation, which has enlisted the services of thousands of members of the private bar in cases involving voting, education (including school desegregation), employment, housing, municipal services, the administration of justice and law enforcement.

The Lawyers' Committee has a long history of direct support for, and participation in, cases furthering school desegregation in this Court and in the courts of appeals, including the instant case below. *E.g., Board of Education* v. *Harris*, 444 U.S. 130 (1979); *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); and *Riddick* v. *School Board of the City of Norfolk*, 784 F.2d 521 (4th Cir.), *petition for cert. filed*, 54 U.S.L.W. 3811 (U.S. May 30, 1986) (No. 85-1962).

NAACP Special Contribution Fund

The National Association for the Advancement of Colored People ("NAACP") is a New York non-profit membership corporation. The Special Contribution Fund (the "Fund") is an organization exempt from federal income taxes under 26 U.S.C. § 501(c)(3). The Fund supports legal and educational projects of the NAACP. The NAACP's principal aims and objectives are set forth in its articles of incorporation:

> . . . voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the Courts, education for their children, employment according to their ability, and complete equality before the law.
>
> To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon, together with any and all things which may lawfully be done by a membership corporation . . .

The NAACP has a long history of participating in this Court, both as a party and as *amicus curiae*, in cases presenting constitutional and statutory claims of racial dis-

crimination. *E.g., Washington* v. *Seattle School District No. 1*, 458 U.S. 457 (1982); *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978); *Pasadena City Board of Education* v. *Spangler, supra; Washington* v. *Davis*, 426 U.S. 229 (1976); *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

American Civil Liberties Union

The American Civil Liberties Union ("ACLU") is a nationwide, nonpartisan organization of more than 250,000 members. The ACLU is dedicated to protecting the fundamental rights of the people of the United States. Among those rights is the equal protection right to a nondiscriminatory, desegregated public education.

The ACLU has a long history of direct representation and *amicus* participation in cases furthering school desegregation before this Court. *E.g., Crawford* v. *Los Angeles Board of Education*, 458 U.S. 527 (1982); *Dayton Board of Education* v. *Brinkman*, 443 U.S. 526 (1979); *Columbus Board of Education* v. *Penick*, 443 U.S. 449 (1979); *Pasadena City Board of Education* v. *Spangler, supra.*

Mexican American Legal Defense and Educational Fund

The Mexican American Legal Defense and Educational Fund ("MALDEF") is a national civil rights organization established in 1967. Its principal objective, through litigation and education, is to secure the civil rights of Hispanics living in the United States. MALDEF has represented Hispanics in numerous education cases, including twenty desegregation cases brought under the Fourteenth Amendment.

MALDEF has presented significant education issues to this Court in such cases as *Plyler* v. *Doe*, 457 U.S. 202

(1982) and *Keyes* v. *School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973). MALDEF and its local counsel continue to represent Hispanic clients in these cases. The instant case has a direct impact on the interest of Hispanic students in the Houston and Austin, Texas, school districts which have been judicially declared unitary.

Reasons for Granting the Writ

POINT I

This Case Is One of Overwhelming Public Importance.

Amici organizations, each with substantial experience in civil rights and school desegregation cases, have taken the unusual step of presenting their joint views to this Court at the certiorari stage because we are convinced that the *Riddick* decision has enormous significance for school desegregation in particular, and for Fourteenth Amendment jurisprudence in general.

The facts in this case are extraordinary, and the approach taken by the courts below could lead to widespread abandonment of pupil assignment measures which have been implemented in school systems around the country, largely at the prodding of federal courts, to eradicate the effects of generations of segregation and discrimination against racial minorities.

Amici urge that certiorari be granted in order that this Court may determine whether the Fourth Circuit was correct in holding that a school district, now integrated by busing and other affirmative support and thus unitary in that sense, has no further obligation under *Brown* v. *Board of Education*, even though cessation of such affirmative

relief will result in resegregation.* This question and the issues it presents are of the widest importance in American public education, with *Riddick* foreshadowing over one hundred similar cases. The lives and opportunities of too many of the nation's children are at stake to permit the law slowly to evolve through the circuits.

American society has been transformed by this Court's holding in *Brown* v. *Board of Education*, that "in the field of public education the doctrine of 'separate but equal' has no place." 347 U.S. at 495. Generations of school children know firsthand that racial segregation cannot be required nor can racial exclusion be openly condoned.

The opinion below heralds a new doctrinal era, one that casts *Brown* aside and writes an end to school desegregation. The decision does this, and moreover will likely be widely perceived as doing so, because of its explicit holding that the entire body of *Brown* desegregation law is irrelevant. 784 F.2d at 539. Where a desegregation plan is working, that is, producing "unitariness", the Fourth Circuit authorizes the plan's dismantlement. Indeed, the court frees the school board of any further obligation to desegregate. The circuit court thus provides what this Court has long denied, a formula for resegregating school systems throughout the country.**

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* For the purposes of this brief, amici assume that the 1975 Order (see 784 F.2d at 525) *at the time of its entry* dispositively determined that the Norfolk school system was "unitary." We believe, however, that the reasons set forth by the petitioners are decisive for rejecting the claim that the consent order is dispositive of the claims in *Riddick*.

** As petitioners have pointed out, the Department of Justice has already encouraged 164 school districts nationwide to follow the Fourth Circuit formula for disbanding desegregation plans. *See* Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit at 37-38.

The Fourth Circuit's error is evident when the decision is summarized starkly, but not unfairly: Busing is the buttress to Norfolk's unitary school system but, because the system is unitary, the school board has no obligation to continue busing or to implement any other plan to create stable integration. *Brown* is discarded with its purpose yet unrealized and its promise to the ear, now broken to the heart. If *Brown* is dead, this Court should pronounce and explain the obituary.

POINT II

This Court Should Consider Whether the Courts Below Misapplied the Concept of "Unitariness."

A. The Concept of "Unitariness" Is Dynamic; the Adoption of a Static Definition Was Both Erroneous and Insufficient to Erase Decades of Discrimination.

Desegregation in Norfolk began with the 1957 finding of *de jure* discrimination, followed by years of litigation, a court-ordered desegregation plan in 1971 (requiring busing, pairing and clustering of schools), and a 1975 district court finding, after four years of operation under the plan, of "unitariness." * The finding of "unitariness" was reaffirmed by the district court in 1984, relying specifically on the circumstance that no elementary school was "racially identifiable" (627 F. Supp. 814, 819 (E.D. Va. 1984)), a condition brought about and maintained by the very busing that the school board now desires to eliminate.** In the continu-

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* The history of the Norfolk school desegregation litigation is summarized in the Fourth Circuit's decision (784 F.2d at 524-25) and at length in the Petition for Writ of Certiorari at 4-16.

** The desegregation plan of July 28, 1971, utilized a number of integrative techniques with respect to student assignment including

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ous process of eliminating racial discrimination and its vestiges, the school board now seeks shelter under the finding of "unitariness," with its liberating connotations, to proceed unburdened by any duty to avoid a relapse into segregation, short of explicit intentional discrimination.

Unitariness, however, is not a static concept.* The requirement to achieve unitariness and the correlative duty

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the grouping and pairing of schools, majority-minority transfers, and crosstown busing to "overcome the remaining vestiges of Norfolk's dual school system." *Riddick,* 627 F. Supp. at 817. The plan was thereafter modified by school authorities to create single zone attendance areas when integrated residential areas developed. The Proposed Plan eliminates the grouping and pairing and creates a contiguous single attendance area for each elementary school, thereby removing critical elements of the plan upon which the finding of unitariness was based.

The Norfolk School Board adopted the Proposed Plan by a vote of 5 to 2. Those board members voting in favor of the Plan included four whites and one black. The two individuals voting against the plan are black. More recently, in 1986, respondents pointed out that the school board, now consisting of three blacks and four whites, voted unanimously to implement the Proposed Plan. Response Opposing Application for Injunction Pending Certiorari at 8, *Riddick, supra.* The approval of certain black members of the school board should not be interpreted to imply general support in Norfolk's black community for the Proposed Plan. Appointments to the board are in the gift of the City Council and not the electorate directly. Moreover, the black community has strongly voiced its opposition to the proposed changes and has maintained its support for a desegregated school system. 4th Cir. App. 823, 2158. (Dr. Armor found that three-fourths of the black parents favor busing to achieve racial balance. His poll data showed that a majority of all Norfolk parents favored the present desegregation plan.)

* *See United States* v. *Swift & Co.,* 189 F. Supp. 885 (N.D. Ill. 1960), *aff'd per curiam,* 367 U.S. 909 (1961), *modified,* 1980-1 Trade Cases (CCH) ¶ 63,185 (N.D. Ill. 1980):

> Having completed this divestiture, the petitioners now seek leave to re-combine, in part upon the ground that divestiture

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to eliminate the continuing effects of past discrimination are obligations enduring as long as necessary to eradicate racial discrimination "root and branch". *Green* v. *County School Board,* 391 U.S. 430, 437-38 (1968). *See Wygant* v. *Jackson Board of Education,* 54 U.S.L.W. 4479, 4482 (U.S. May 19, 1986) (No. 84-1340). The metaphor has meaning only if the regrowth of racially identifiable schools is prevented.

A constitutionally inviolate unitariness cannot be ascribed to a system like Norfolk's which is so unstable that reversion to segregation follows immediately upon the discontinuance of affirmative integration techniques. The elimination of the current desegregation plan, in favor of the school board's Proposed Plan, reinstates the unconstitutional status quo ante. In 1970, the unquestionable vestiges of *de jure* segregation throughout the Norfolk elementary school system were manifested, in part, by the presence of "black" elementary schools, representing 30% of the school system. Pl. Ex. 153. As soon as "neighborhood school" assignment under the Proposed Plan is put into effect, concededly ten of the same formerly identifiable "black" schools will be resurrected, each having more than 95% black enrollment. Pl. Ex. 144, 147. Racially isolated "black" schools will again comprise nearly 30% of the school system. Under the Proposed Plan, resegregation will be the result of an affirmative, willful change, rather than demographic patterns over which the school board has no

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> itself has eliminated the need. As vividly pointed out by counsel for *amici* in oral argument, the principle thus proposed would invite the Standard Oil trust, broken up by Standard Oil Co. of New Jersey v. United States, 1911 . . . now to re-assemble.

189 F. Supp. at 913.

power. This is as offensive to *Brown,* and the prior Norfolk desegregation decrees, as were the *de jure* conditions existing in 1970.

B. This Court Should Consider Whether the Fourth Circuit Abdicated Its Responsibility to Eradicate the Effects of Past Discrimination.

The Fourth Circuit assumed that it could invalidate the Proposed Plan only if there was a new violation. 784 F.2d at 538-39. The court recognized that where, after racial segregation, the transition from a dual to a unitary school system has not been completed, "the board must show that the proposed changes are consistent with its continuing affirmative duty to eliminate discrimination." But the court concluded that once a "unitary finding" has been made, its "role ends," foreclosing its intervention to counteract resegregation. *Id.* at 535.

By limiting its review, thereby halting its analysis, the Fourth Circuit failed to weigh the effects of the board's proposed actions. The board's Proposed Plan *returns* 39% of the black elementary school students to the conditions which prevailed for their predecessors at the time the original *de jure* finding was made in 1957. *Beckett* v. *School Board of the City of Norfolk,* 148 F. Supp. 430 (E.D. Va.), *aff'd,* 246 F.2d 325 (4th Cir.), *cert. denied,* 355 U.S. 855 (1957). This result is contrary to the continuing obligation to eradicate the effects of past discrimination, specified in *Brown* and *Swann.** If school authorities who have administered a *de jure* segregated school system have an affirmative obligation to avoid practices which perpetuate a dual school system while striving to *create* a unitary system, it is indisputable that those same authorities must

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* *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971).

avoid actions which *re-establish* the dual school system by dismembering a unitary one.

C. This Court Should Consider Whether the Fourth Circuit Improperly Required Proof of Intent in a Remedies and Effects Case.

This case is about remedies, not violations. If integration falls apart on withdrawal of the remedies, the violation has not been cured. Under the plan now in force, the remedies effect desegregation. Under the Proposed Plan, the elimination of remedies assures resegregation. The Fourth Circuit failed to see that *Riddick* differs from the predecessor Norfolk school cases which supplied the predicate Fourteenth Amendment violation. School systems throughout the country which are operating under unitary plans need guidance as to remedies, a guidance omitted from the opinion below.

The Fourth Circuit inappropriately likened this case to *Washington* v. *Davis** and *Arlington Heights* v. *Metropolitan Housing Development Corp.*** and held that plaintiffs must prove a new discriminatory intent. In those cases, the question was whether previously unchallenged government action can be unconstitutional merely on the basis of disparate impact and without a showing of discriminatory intent. As this Court pointed out in both cases, a general constitutional right to be free of disparate impact would chill valid and useful government acts to achieve important societal ends.

The relevant analogy for present purposes was, however, *Wright* v. *Council of the City of Emporia,* 407 U.S. 451

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* 426 U.S. at 229.

** 429 U.S. 252 (1977).

(1972), where, after a finding of intentional segregation and a federal court order to dismantle a dual system, the City of Emporia sought to withdraw from the school district. The withdrawal threatened to interfere with the plan for integration. This Court held the withdrawal impermissible solely because of its effect. Distinguishing *Emporia* in *Washington* v. *Davis,* this Court pointed out: "There was thus no need [in *Emporia*] to find 'an independent constitutional violation.' " "The constitutional predicate . . . was 'the enforcement until 1969 of racial segregation in a public school system of which Emporia had always been a part.' " 426 U.S. at 243, *citing Emporia,* 407 U.S. at 459.

The distinction is of consequence. Proof of intent is important for purposes of initial violation, at least in cases such as *Washington* v. *Davis,* where the social costs of condemning government action on the basis of disparate impact alone are high. But where the question is the sufficiency of relief to cure a proved violation, the requirement of demonstrating a new discriminatory intent is both irrelevant and redundant.*

This Court should grant the writ in order to clarify that a remedies case requires no further proof of intent but rather analysis of the fit between eradication of the violation and the means chosen therefor.

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* As this Court said in *Emporia,* rejecting the claim that plaintiff must prove illegal intent: "the mandate of *Brown II* [*Brown* v. *Board of Education,* 349 U.S. 294 (1955)] was to desegregate schools, and we have said that '[t]he measure of any desegregation plan is its effectiveness.' " 407 U.S. at 462, *citing Davis* v. *School Commissioners of Mobile County,* 402 U.S. 33, 37 (1971).

D. This Court Should Consider Whether School Board Action to Prevent "White Flight" and to Allay Whites' Distaste for Integration Demonstrates Intent to Discriminate.

If this Court concludes that intent to discriminate must first be established, then the record conclusively does so, or at a minimum creates an unrebutted presumption against the school board, because the Proposed Plan is racial in design, based upon race conscious criteria, for the purpose of reaching a discriminatory result.

The school board made two racially-based political judgments in deciding to adopt the Proposed Plan: first, the Board accepted the presumption that white students are more likely to remain in Norfolk public elementary schools if whites constitute a sizeable portion of the student body; second, that the cost of creating additional racially identifiable "black" elementary schools was outweighed by the benefit of inducing white students to remain in the public elementary school system. The result of the Proposed Plan would be a great increase in the racial identifiability of a substantial number of elementary schools. 784 F.2d at 527. All of these aspects of the genesis and adoption of the Proposed Plan fundamentally implicate race.

The courts below treated the *Riddick* case as one in which a race-neutral pupil assignment plan was challenged on the ground of discriminatory motivation. *Id.* at 540. This ignores the fact that the challenged plan is simply not race-neutral nor does it use race to cure discrimination. Its very conception arises from the dynamic that: (a) the Board wanted to keep white children in the schools; (b) so, it hired a consultant to conduct a survey of the attitudes of parents; (c) the consultant determined that white parents did not mind having their children in schools with blacks, so long as there are not *too many* blacks compared with

whites; (d) the Board then designed a plan whose essential purpose was to fix a racial balance in the schools which was acceptable to whites. *Id.* at 526-27. This kind of action to achieve a racially-defined result mocks the concept of Equal Protection, without regard to whether the motive for seeking that result is malign or benign.*

The purposive creation of majority white schools to avoid white flight is an inescapable slur on blacks—it "is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to . . . race prejudice" (*Strauder* v. *West Virginia,* 100 U.S. 303, 308 (1879))—whether or not ill-intended. If—as *Brown* fundamentally recognized—"separate" cannot be "equal," neither can "proportion-controlled" be "equal" when the proportions are race-defined. The infidelity of the Fourth Circuit decision to *Brown* is indefensible.

The school board's action, grounded in racial distinctions, is inherently suspect and suspect distinctions must be subject to strict judicial scrutiny. *Wygant,* 54 U.S.L.W. at 4481 (where a state agency's action operates in favor of a certain racial group and against another, there arises a suspect classification based on race); *Regents of the University of California* v. *Bakke,* 438 U.S. at 290-91; *Loving* v. *Virginia,* 388 U.S. 1, 8-9 (1967). Strict scrutiny shifts the burden to the school board to establish a compelling

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* *See e.g. Anderson* v. *Martin,* 375 U.S. 399 (1964) (invalidating a Louisiana statute which required that the race of candidates be designated on all ballots in state elections); *Hunter* v. *Erickson,* 393 U.S. 385 (1969) (invalidating an amendment to the Akron, Ohio city charter which prevented the city council from implementing any anti-discrimination housing ordinances without the approval of a majority of the voters).

As Justice Powell stated in *Regents of the University of California* v. *Bakke,* "[p]referring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids." 438 U.S. at 307.

state interest justifying its racially conscious actions. *Bakke*, 438 U.S. at 290-91. If intent is to be an issue, the burden of proof should have fallen on the school board to establish a constitutionally permissible basis for its actions.

Under the strict scrutiny test the "means chosen by the State to effectuate its purpose must be 'narrowly tailored to the achievement of that goal.'" *Wygant*, 54 U.S.L.W. at 4481, *citing Fullilove* v. *Klutznick*, 448 U.S. 448, 480 (1980) (opinion of Burger, C.J.). As in *Wygant*, the Norfolk Board's stated purpose is to effect and maintain the desegregation of the school system. Just as this Court held in *Wygant* that the role model theory espoused by the Jackson Board had "no logical stopping point," "allow[ing] the Board to engage in discriminatory hiring and layoff practices long past the point required by any legitimate remedial purpose" (Powell, J., for the plurality, 54 U.S.L.W. at 4482), the Norfolk Board's reliance on the white flight rationale is likewise limitless. The judicially rejected idea that black students are better served by black teachers is analogous to the idea that white students are more likely to remain in the public system if they constitute a sizeable portion of the student body. Both notions may be used to escape the obligation to remedy discriminatory practices.

From *Brown II*, 349 U.S. at 300, and *Cooper* v. *Aaron*, 358 U.S. 1, 16 (1958) through *Monroe* v. *Board of Commissioners of Jackson*, 391 U.S. 450, 459 (1968) and *United States* v. *Scotland Neck City Board of Education*, 407 U.S. 484, 491 & n.5 (1972), however, this Court has repeatedly rejected fears, predictions, or reports of white withdrawal from desegregating school districts as a justification for requiring anything less than the complete eradication of racially dual school systems through the implementation of plans designed to achieve "the greatest possible

degree of actual desegregation, taking into account the practicalities of the situation." *Davis* v. *School Commissioners of Mobile*, 402 U.S. at 37.* There is no way to square the *Riddick* decisions below with these principles.

The notion that the Fourteenth Amendment would permit public officials to reassign minority students mandatorily to all-minority schools, in an effort to lure additional white students to enroll in *other* public schools, clashes violently with the constitutional principle underlying the *Brown* decision itself. As Judge Sobeloff eloquently put it, the constitutional requirement of desegregation "is not founded upon the concept that white children are a precious resource which should be fairly apportioned." *Brunson* v. *Board of Trustees*, 429 F.2d 820, 826 (4th Cir. 1970) (concurring opinion).

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* To distinguish, in the manner of the Fourth Circuit (784 F.2d at 539), this Court's decisions merely because they involved an earlier phase of desegregation, that of dismantling of dual school systems, is disingenuous where the Proposed Plan undermines "unitariness" and re-establishes a key aspect of the prior dual system.

Conclusion

For the foregoing reasons, the Lawyers' Committee for Civil Rights Under Law, the NAACP Special Contribution Fund, the American Civil Liberties Union and the Mexican American Legal Defense and Educational Fund, as *amici curiae*, respectfully pray that the petition for writ of certiorari be granted and the judgment below be reversed.

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Respectfully submitted,

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